

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KEVIN SMITH,)	
)	
v.)	C.A. No. 06-139 Erie
)	
UNITED STATES OF AMERICA, et al,)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on June 22, 2006, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on May 18, 2007, recommended that Defendants' Motion to Dismiss, or In the Alternative, for Summary Judgment as to the Eighth Amendment claim against the individual Defendants (Doc. #19) be granted. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail at FCI McKean, where he is incarcerated, and on Defendants. Objections were filed by Plaintiff on June 7, 2007, with Defendants responding to the objections orally during the telephone status conference held June 29, 2007 before Magistrate Judge Susan Paradise Baxter. After de novo review of the pleadings and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this ^{25th} Day of July, 2007;

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss, or In the Alternative, for Summary Judgment as to the Eighth Amendment claim against the individual Defendants (Doc. #19) is GRANTED. As the only remaining claim in this case is an FTCA claim against the United States of America, all individually named Defendants are DISMISSED and are to be terminated from the docket.

The report and recommendation of Magistrate Judge Baxter, dated May 18, 2007,
is adopted as the opinion of the court.


MAURICE B. COHILL, JR.
United States District Judge

cc: Susan Paradise Baxter
U.S. Magistrate Judge

all parties of record _____